HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

AA
Appellant

and

THE TRUSTEES OF THE ROMAN CATHOLIC CHURCH FOR THE DIOCESE OF MAITLAND-NEWCASTLE
ABN 79469343054
Respondent

APPELLANT'S SUBMISSIONS

PART I – CERTIFICATION

1. These submissions are in a form suitable for publication on the internet.

PART II – ISSUES ARISING

2. Can a non-delegable duty be owed to ensure that a delegate does not commit an intentional criminal act?

3. Did a Catholic diocese, in the 1960s, owe such a non-delegable duty to children entrusted to the pastoral care of a priest of the diocese for religious education?

4. Did a Catholic diocese, in the 1960s, owe no duty of care at all to a child assaulted by a priest of the diocese, unless it is shown that the Bishop or senior priests in the diocese knew that the priest posed a risk to children?

PART III – SECTION 78B NOTICE

5. No notice is required under s 78B of the *Judiciary Act 1903* (Cth).

PART IV – CITATIONS

6. The judgment of the primary judge is reported at (2024) 334 IR 70. The medium neutral citation is: [2024] NSWSC 1183. The judgment of the Court of Appeal is unreported. The medium neutral citation is: [2025] NSWCA 72.

PART V – FACTS

7. The plaintiff was born in November 1955 (CAB 130; CA[25]).

8. The primary judge found that the appellant, then aged 13, was sexually abused on multiple occasions in 1969 by Fr Ronald Pickin, a priest of the Diocese of Maitland-Newcastle, in the presbytery of St Patrick's Catholic Church, Wallsend. The appellant was a practising Catholic (CAB 56; SC[213]) and was taught religious education by Fr Pickin at Wallsend High School (CAB 56; SC[212]; CAB 148; CA[83], [255]).

9. Fr Pickin was an incardinated priest of the Diocese, subject to the bishop's powers of direction and control (CAB 11; SC[10.4]); and was a priest of the parish of St Patrick's, Wallsend (CAB 11; SC[10.5]). Fr Pickin attended Wallsend High School to provide religious education classes to students (CAB 11; SC[10.6]). The appellant received religious instruction from Fr Pickin (CAB 11; SC[10.7]). A friend of the appellant, Mr Alan Perry, also received instruction from Fr Pickin (CAB 38; SC[137]).

10. Fr Pickin had a sexual interest in teenage boys (CAB 26; SC[72]; CAB 155; CA[102]); sought out opportunities to establish intimacy with boys (CAB 155; CA[102]); and used Church premises for that purpose (CAB 155; CA[102]). Fr Pickin sexually assaulted at least two other boys: both Mr Stephen McClung and Mr BB (CAB 22; SC[56]); which assaults he committed on church premises (CAB 28; SC[81]; CAB 155; CA[102]). Fr Pickin had a tendency to sexually abuse boys who were in his care when he was able (CAB 27, 28; SC[79], [82]; CAB 155; CA[102]). Fr Pickin also consorted with a paedophile priest, Fr John Denham, and was with Fr Denham when Fr Denham sexually abused boys (CAB 46; SC[170]). Fr Pickin also invited boys to go on holidays with him (CAB 11; SC[10.11]), including the appellant (who did not accept the invitation) and Mr Perry (who did) (CAB 38, 39; SC[137], [139]).

11. Fr Pickin's involvement with the appellant and Mr Perry started in 1969 (CAB 11; SC[10.7]), when the appellant was in second form at Wallsend High School (CAB 11; SC[10.7]), and was 13 at the time (CAB 43; SC[157]). Fr Pickin invited both the appellant and Mr Perry to the Presbytery of St Patrick's Church (CAB 11; SC[10.7]). On multiple occasions, the appellant attended St Patrick's Church Presbytery with Mr Perry and Fr Pickin (CAB 11; SC[10.8]). While at the Presbytery, Fr Pickin gave both the appellant and Mr Perry beer and cigarettes (CAB 11; SC[10.9]). Fr Pickin also had a poker machine in the dressing room of the Presbytery, which he made available to the boys to play (CAB 11; SC[10.10]). The appellant spent time playing that poker machine, with which Mr Perry was not interested (CAB 45; SC[167]). Fr Pickin had the opportunity to abuse the appellant out of sight of Mr Perry (CAB 45; SC[167]). Mr Perry

agreed that it was possible that there were times when the appellant might have gone to a different part of the Presbytery, where he wasn't present (CAB 44; SC[161]).

12. The primary judge was satisfied that the appellant was sexually abused by Fr Pickin (CAB 42, 48, 56; SC[154], [182], [213]); that the special role the Diocese gave Fr Pickin, including access to children and students, allowed him to commit that abuse (CAB 57; SC[218]); that the Diocese was vicariously liable for the abuse (CAB 57; SC[219]); that the Diocese owed the appellant a duty of care (CAB 58; SC[224]); that the duty was breached (CAB 65; SC[260]); and that the appellant suffered harm as a result (CAB 67–8; SC[266]).

10 13. The appellant expressly pleaded and put in issue that the Diocese owed him both a general and a non-delegable duty of care, and was vicariously liable to him (CAB 12; SC[11]). Unlike many other Roman Catholic dioceses that have admitted the existence of such duties of care,[1] the Diocese here denied that it owed any relevant duty.[2] It was not disputed that the primary judge's finding of vicarious liability could not survive this Court's judgment in *Bird v DP*, which post-dated the judgment of the primary judge (CAB 128, 137–8; CA[19], [47]).

14. The Court of Appeal reversed the primary judge's conclusions that the Diocese owed the appellant either a general duty of care (CAB 127, 202, 206; CA[17] [241], [253]) or a non-delegable duty (CAB 127, 175–80, 206; CA[17], [156]–[168], [253]). That was
20 the basis upon which the primary judge's judgment in favour of the appellant was reversed. Those matters are addressed below. The differences between the members of the Court of Appeal as to the soundness of the primary judge's factual findings will be addressed in reply, as that is the subject of the respondent's notice of contention.

PART VI – ARGUMENT

Context

15. This appeal concerns the legal relationship between a Diocese of the Roman Catholic Church, its diocesan parochial clergy, and young people entrusted to its pastoral and educational care. The Diocese of Maitland-Newcastle is an unincorporated organisation

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1 As, for example, occurred in *Bird v DP* (2004) 98 ALJR 1349 at 1352 [3] (Gageler CJ, Gordon, Edelman, Steward and Beech-Jones JJ).

2 Defence at [25]–[26] (ABFM vol 1 at 75).

under Part 1B Division 4 of the *Civil Liability Act*.[3] The respondent — a statutory trustee corporation[4] — was acknowledged to be a proper defendant to 'child abuse proceedings' relating to the Diocese, as contemplated by s 6L (CAB 11; SC[10]).[5]

16. By reason of the Diocese not being incorporated, it would not ordinarily have borne legal duties towards the appellant, notwithstanding that many other aspects of power, reliance and control that would ordinarily go towards establishing a duty of care (whether general or non-delegable) were fulfilled. Hitherto, the lack of a legal person capable of being sued had been a notorious impediment to the redress of abuse occurring in the context of unincorporated organisations; even when those organisations controlled valuable property held by corporate trustees.[6] That circumstance has been remedied in NSW by Part 1B of the *Civil Liability Act*, whose express purposes include 'to enable child abuse proceedings to be brought against unincorporated organisations': s 6I(a). Similar legislation exists throughout Australia.[7]

17. Those statutes are a frank legislative embodiment of Maitland's observation that 'our "unincorporate bodies" have lived and flourished behind a hedge of trustees'.[8] As the Attorney-General put it in his second reading speech for the Act that introduced Part 1B,[9] '[t]he corporate status of these institutions is irrelevant to the suffering of survivors and must be irrelevant to their quest for justice. This is beneficial legislation and is to be interpreted as such by the courts, even if that requires them to crystallise an abstract concept of an unincorporated organisation with fluctuating membership.'[10] Given that legislative context, it was remarkable for Leeming JA to say that a plaintiff

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3 Inserted by the *Civil Liability Amendment (Organisational Child Abuse Liability) Act 2018* (NSW).

4 Constituted as body corporate by the *Roman Catholic Church Trust Property Act 1936* (NSW) s 4.

5 Amended Statement of Claim at [5] (ABFM vol 1 at 12); Defence at [5] (ABFM vol 1 at 74).

6 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report* (2015), 496–511; New South Wales, *Parliamentary Debates*, Legislative Assembly, 26 September 2018, 20–24 (Mark Speakman, Attorney-General) (second reading speech of the Civil Liability Amendment (Organisational Child Abuse Liability) Bill 2018 (NSW)); cf *Trustees of The Roman Catholic Church v Ellis* (2007) 70 NSWLR 565.

7 *Civil Law (Wrongs) Act 2002* (ACT) Chapter 8A, Part 8A.2; *Personal Injuries (Liabilities and Damages) Act 2003* (NT) Part 3A Div 6; *Civil Liability Act 2003* (Qld) Chapter 1 Part 2A Div 3; *Civil Liability Act 1936* (SA) Part 7A, Div 4; *Civil Liability Act 2002* (Tas) Part 10C, Div 4; *Legal Identity of Defendants (Organisational Child Abuse) Act 2018* (Vic); *Civil Liability Act 2002* (WA) Part 2A, Div 2.

8 Maitland, 'Trust and Corporation' in HAL Fisher (ed), *The Collected Papers of Frederic William Maitland* (Cambridge: Cambridge University press, 1911) vol 3, 353.

9 *Civil Liability Amendment (Organisational Child Abuse Liability) Act 2018* (NSW).

10 New South Wales, *Parliamentary Debates*, Legislative Assembly, 26 September 2018, 24 (Mark Speakman, Attorney-General).

takes on 'a heavy burden' (CAB 201; CA[240]) when they proceed against an unincorporated organisation, rather than the individual perpetrator of abuse. Parliament's express purpose was to alleviate that very burden.

18. The *Civil Liability Act* applies to an organisation where: (1) a plaintiff commences or wishes to commence a civil claim against an unincorporated organisation arising from child abuse, whether arising under statute or the common law; (2) the organisation can sufficiently be identified 'as if the organisation had legal personality'; and (3) an entity is appointed as a 'proper defendant' in respect of the organisation. By definition, the statutory concept of 'unincorporated organisation' goes beyond natural or artificial legal persons that would otherwise be capable of owing legal duties to a claimant.

19. Under s 6L, there is a process for the organisation to appoint an entity 'as a proper defendant for the organisation at any time'. Under s 6M, an entity 'is suitable to be appointed as a proper defendant for an organisation' if it 'is able to be sued' and 'the entity (or, if the entity is a trustee of a trust, the trust) has sufficient assets in this State to satisfy any judgment or order that may arise out of child abuse proceedings against the unincorporated organisation'. It bears emphasising: the proceedings in respect of which a proper defendant is appointed are those 'against the unincorporated organisation'. Here, the relevant unincorporated organisation is the Diocese of Maitland-Newcastle. The respondent is accepted to be 'proper defendant' and, as the trust corporation constituted by the *Roman Catholic Church Trust Property Act 1936* (NSW), is also the trustee of the most obvious 'associated trust': s 6N(3).

20. The critical substantive provision is s 6O of the *Civil Liability Act*. Section 6O(a) provides that where (as here) a proper defendant has been identified, that person 'is taken to be the defendant in the child abuse proceedings against the organisation on behalf of the organisation and is responsible for conducting the proceedings as the defendant'. Under s 6O(b), 'anything done by the unincorporated organisation is taken to have been done by the proper defendant', and under ss 6O(d) and (e), 'a court may make substantive findings in the child abuse proceedings against an unincorporated organisation *as if the organisation had legal personality*' and the proper defendant 'incurs any liability from the claim in the proceedings on behalf of the organisation that the organisation *would have incurred if the organisation had legal personality*' (emphases added). As the Attorney-General put it, '[t]he proper defendant stands in the

shoes of the unincorporated organisation itself, and the unincorporated organisation remains involved in the proceedings.'[11]

21. The breadth of the kind of claim covered by the *Civil Liability Act* is evident from the definition of 'child abuse proceeding' in s 6J, and made explicit in the Explanatory Note and Second Reading Speech for the relevant Bill.[12] The Attorney-General explained that '[t]he proposition in the Ellis case that an unincorporated organisation cannot be sued in its own name under the common law is overturned by proposed section 6K (1) and proposed section 6O (c) and (d). The proposition in Ellis that trustees are too remote to be liable for the abuse is overturned by the proposed sections 6N and 6O (a) and (b).'[13]

10 22. The very essence of a claim under Part 1B of the *Civil Liability Act* is that it is a hybrid, because an otherwise-unincorporated organisation is given statutory corporate form, embodied in the person of a nominated defendant. In that context, Leeming JA's criticism of the appellant's pleading and the parties' use of the phrase 'the Diocese' (CAB 180–2; CA[171]–[177]) was misplaced, and overlooked the text and purpose of Part 1B of the *Civil Liability Act*. 'The Diocese' was used by *both* parties, uncontroversially, to identify a particular unincorporated organisation — namely, a geographically-identifiable subset of the Roman Catholic church having various components (including its property trust) and a fluctuating membership, but existing in a hierarchical relationship under the authority of a particular bishop.

20 23. The result of the Court of Appeal's decision is stark. An unincorporated institution that functions through, but does not 'employ', its clergy does not owe any duty of care to vulnerable children entrusted to its pastoral supervision, unless its senior officers personally knew, in advance, that a particular priest had a history of committing sexual assaults upon children. Even if the institution had such knowledge, it will not be vicariously liable for, nor will it owe any non-delegable duty in respect of, such abuse committed towards vulnerable children by its priests. If the Court of Appeal is right, then notwithstanding Parliament's explicit purpose in abolishing it, the stultifying effect of the so-called *Ellis* defence remains in full force. That cannot be right.

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11 New South Wales, *Parliamentary Debates*, Legislative Assembly, 26 September 2018, 24 (Mark Speakman, Attorney-General).

12 Explanatory Note, Liability Amendment (Organisational Child Abuse Liability) Bill 2018 (NSW), 3.

13 New South Wales, *Parliamentary Debates*, Legislative Assembly, 26 September 2018, 23 (Mark Speakman, Attorney-General), referring to *Trustees of The Roman Catholic Church v Ellis* (2007) 70 NSWLR 565.

Ground 1 – Non-delegable duty

24. The first ground of appeal raises an important issue left undetermined by this Court's decision in *Bird v DP*. Is it legally possible for a non-delegable duty of care to extend to intentional criminal wrongdoing by the delegate? If so, in the 1960s, did a Roman Catholic diocese — sued though a 'proper defendant' under Part 1B Division 4 of the *Civil Liability Act* — owe such a non-delegable duty of care to a vulnerable child entrusted to its educational and pastoral care? The Court of Appeal was wrong to have rejected the existence of non-delegable duty of care (CAB 127, 175–80, 206; CA[17], [156]–[168], [253]). The appellant's argument does not rely on s 5Q of the *Civil Liability Act*.

The factual foundation for a non-delegable duty

25. Unlike in *Bird v DP*,[14] the existence of a non-delegable duty was squarely pleaded and put in issue from the outset in this case (CAB 12; SC[11]; CAB 175–80; CA[156]–[168]).[15] The primary judge rightly identified it as an issue in dispute (CAB 12; SC[11.8]). Critically, the appellant's pleaded claim relied on the priestly role common to all incardinated diocesan clergy; the role and status of all diocesan clergy vis a vis lay people; and the teaching and pastoral ministry of all clergy who engaged with young people, including by teaching religious studies in state schools.[16] That included the manner in which the role allowed priests to achieve the trust of, and unsupervised intimacy with, young people under their care.[17]

26. The relevant pleaded 'role', 'status' and 'functions' were those of diocesan parish clergy generally: nothing was alleged that depended on any more specific role. The relevant role of Fr Pickin was identified straightforwardly as that of a member of the incardinated diocesan parish clergy, whose duties as *a* priest at St Patrick's church as part of his apostolate (i.e. ministry of religious outreach) included giving religious instruction in the Catholic faith and teaching students at Wallsend High Schol.[18]

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14 (2024) 98 ALJR 1349 at 1361 [40]–[43] (Gageler CJ, Gordon, Edelman, Steward and Beech-Jones JJ), 1406 [256] (Jagot J).

15 Amended Statement of Claim at [34] (ABFM vol 1 at 15); Defence at [26] (ABFM vol 1 at 74).

16 Amended Statement of Claim at [17]–[21] (ABFM vol 1 at 14).

17 Amended Statement of Claim at [20]–[21] (ABFM vol 1 at 14).

18 Amended Statement of Claim at [8] (ABFM vol 1 at 13).

27. None of that was denied by the Diocese in its defence;[19] nor did the Diocese plead or otherwise put in issue any different role or status for Fr Pickin. To the contrary, as the List of Matters and Facts in Issue at trial identified, none of that was controverted.[20] Nor did the Diocese put on any evidence to controvert the evidence of Fr Kevin Dillon, whose testimony and personal experience in relation to diocesan clergy spoke equally to the role of parish priests and assistant priests; whose evidence was accepted by the primary judge (CAB 17; SC[39]).[21] Among other things, Fr Dillon pointed to the Catechism, in which the authoritative teaching of the Church is that priests 'take upon themselves [the bishop's] duties, and in their daily toils they discharge them'.[22]

10 28. Fr Dillon's evidence was rightly found by the primary judge to have 'established the nature of the position to which Father Pickin was appointed and the power, control and authority which he was able to exercise as a result' (CAB 52; SC[204]); including in relation to the 'special role' occupied by diocesan clergy vis a vis young people in their care (CAB 57; SC[218]–[219]), and the connection between Fr Pickin's role, his access to children, his occupancy of the Presbytery, his power over who came to the Presbytery, and the opportunity to invite his students to the Presbytery as he did (CAB 59–60; SC[228]–[229]).

29. That expert evidence was relied on in respect of an expressly pleaded non-delegable duty of care (CAB 12; SC[11]);[23] and it was supplemented and corroborated by evidence
20 from multiple lay witnesses about how they in fact experienced the trust, deference, power, hierarchy, intimacy and control of diocesan clergy in relation to young people in that era. That included the appellant;[24] his brother,[25] who was also taught religious

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19 Defence to Amended Statement of Claim at [11] (ABFM vol 1 at 74).

20 List of Matters and Facts in Issue (ABFM vol 1 at 79–80).

21 First report of Fr Kevin Dillon (Exh 2) (ABFM vol 1 at 438); Second report of Fr Kevin Dillon (Exh 3) (ABFM vol 1 at 445); oral evidence of Fr Dillon (T41.6–46.10) (ABFM vol 2 at 558–563).

22 First report of Fr Dillon, question (f) (ABFM vol 1 at 441).

23 Amended Statement of Claim at [34] (ABFM vol 1 at 15).

24 Second evidentiary statement of [AA] at [5]–[9] (Exh 7) (ABFM vol 1 at 314–15); T58.1–86.2 (ABFM vol 2 at 575–603).

25 Evidentiary Statement of [AA's brother] (Exh 4) at [17]–[20] (ABFM vol 1 at 336).

education by Fr Pickin at Wallsend High School; Mr McClung;[26] Mr BB;[27] and Mr Perry[28] (CAB 40–1, 55–6; SC[141]–[143], [209], [213]–[214]).

30. Thus, even if the primary judge did not draw express legal conclusions on the issue of non-delegable duty, the judge's findings leave no doubt about the factual nature of the delegated task, which was never controverted by, or subject to contrary evidence from, the Diocese. In any case, as Edelman and Steward JJ observed in *CCIG Investments Pty Ltd v Schokman*,[29] '[t]here is an obvious identity between the relevant factors to consider in this area of "vicarious liability" and the common factors relied on in establishing a non-delegable duty such as care, supervision, and control'.

10 31. That evidentiary foundation was not affected by the agreed identification — whether or not mistakenly — of Fr Pickin as a 'parish priest', rather than an 'assistant priest'.

32. *First*, for the reasons already explained, even if that involved a misidentification, it is legally irrelevant to the question of principle arising. The appellant's claim has always been straightforwardly based upon, and stands or falls with, Fr Pickin's role as an incardinated priest of the diocese and member of the parochial clergy. It did not depend on any role specific to parish priests distinct from other parish clergy.

33. *Second*, insofar as the alleged misdescription of Fr Pickin led Leeming JA to surmise that some other adult must have been present or in residence at the Presbytery (CAB 145, 191, 203; CA[75], [203], [243]), then that surmise was unfounded and
20 procedurally unfair.[30] There was no contest at trial about, and no evidence of, the presence of any other priest or adult in the Presbytery (whether a parish priest or otherwise). Nor was it put to any witness that some other adult was present in the Presbytery at the relevant times.[31] Each of the appellant and Mr Perry described

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26 Evidentiary Statement of Stephen McClung (Exh 10) at [4]–[5] (ABFM vol 1 355); T 87.1–99.11 (ABFM vol 2 at 604–16).

27 Evidentiary Statement of [BB] (Exh 1) at [6] (ABFM vol 1 at 340); T26.1–34.12 (ABFM vol 2 at 543–51).

28 Evidentiary Statement of Alan Perry (Exh 12B) at [7]–[10] (ABFM vol 1 at 355); T111.1–145.49 (ABFM vol 2 at 628–62).

29 (2023) 278 CLR 165 at 199 [81].

30 Leeming JA's statement (CAB 147; CA[80]) that the description of Fr Pickin 'does not alter the outcome of this litigation' sits uneasily with the drawing on that same alleged misdescription as a reason (CAB 126, 191; CA[12], [203]) for undermining the primary judge's finding about the existence of a duty of care.

31 The evidence also suggested that Leeming JA's surmise was far from being self-evidently correct as a matter of fact or logical deduction. Fr Pickin himself commented that one of his parish priests was mentally ill, and another was an alcoholic (CAB 143; CA[67]), which was at least suggestive that it could

Fr Pickin as the only adult present.[32] Just as the principles in *Coulton v Holcome*[33] mean that the Diocese could not now depart from the basis on which it conducted the trial, nor could the Court of Appeal.[34] It was not apt for the Court of Appeal to consider that the trial was conducted on an 'incorrect basis' (CAB 126, 145; CA[12], [75]). In a common law trial, it is for the parties to identify the issues in dispute and the evidence by which they are to be proven: it is not an abstract inquisition into historical truth.[35]

A non-delegable duty was owed

34. This Court recognises that a non-delegable duty may arise 'where the nature of the relationship between the defendant and the other person to whom the duty is owed is one where the defendant has assumed particular responsibility to ensure that care is taken, rather than merely to take reasonable care'.[36] There is no exhaustive list of circumstances in which such a duty may arise, but they may be typified by situations in which a party has 'undertaken the care, supervision or control of the person or property of another or is so placed in relation to that person or [their] property as to assume a particular responsibility for [their] or its safety, in circumstances where the person affected might reasonably expect that due care will be exercised'.[37]

35. That is an apt description of the relationship between the Diocese and a vulnerable young child such as the appellant who, as a student of religious education and a practising Catholic, was subject to the church's educational and pastoral care, which the Diocese delegated to its priests including Fr Pickin. In that regard, three analogies from the existing categories of non-delegable duties point towards the appropriateness of recognising such a duty on the facts of this case.

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not be assumed that another person, identified as *the* parish priest, was in residence at the Presbytery at any relevant time.

32 T85.40–42 (evidence of AA) (ABFM vol 2 at 602); T115.32ff and T120.40–42 (Mr Perry) (ABFM vol 2 at 632, 637).

33 (1986) 162 CLR 1 at 7 (Gibbs CJ, Wilson, Brennan and Dawson JJ).

34 *Suvaal v Cessnock City Council* (2003) 77 ALJR 1449 at 1455 [36] (Gleeson CJ and Heydon J), 1474 [144]–[145] (Callinan J); *Kuhl v Zurich Financial Services Australia Ltd* (2011) 243 CLR 361 at 388 [72] (Heydon, Crennan and Bell JJ).

35 See, e.g. *Bank of NSW v Commonwealth* (1948) 76 CLR 1 at 340 (Dixon J); *R v Apostilides* (1984) 154 CLR 563 at 576 (Gibbs CJ, Mason, Murphy, Wilson and Dawson JJ), approving *Whitehorn v The Queen* (1983) 152 CLR 657 at 682 (Dawson J).

36 *Bird v DP (a pseudonym)* (2024) 98 ALJR 1349 at 1360 [37] (Gageler CJ, Gordon, Edelman, Steward and Beech-Jones JJ).

37 *Kondis v State Transport Authority* (1984) 154 CLR 672 at 687 (Mason J); cited in *New South Wales v Lepore* (2003) 212 CLR 511 at 533 [35] (Gleeson CJ) and in *Bird v DP (a pseudonym)* (2024) 98 ALJR 1349 at 1360 [37] (Gageler CJ, Gordon, Edelman, Steward and Beech-Jones JJ).

36. *First*, there is a parallel with the hospital cases, in which a patient is vulnerable to, but has no say over, the terms on which a hospital engages its medical personnel.[38] As in the hospital cases, 'the extent of the obligation which one person assumes towards another is to be inferred from the circumstances of the case.'[39] Here, the similar tripartite pastoral relationship between the (unincorporated) Diocese, its (non-employee) cleric, and the (vulnerable, child) student and parishioner, reveals a systemic problem caused by the structure of non-employment by the Diocese of its clerics — not capable of being chosen or avoided by the appellant — that ought not defeat legitimate claims.

37. *Second*, there is a parallel with the school cases, which have an obvious salience given the educational context of this case.[40] As Gleeson CJ remarked in *New South Wales v Lepore*,[41] '[i]n cases where the care of children, or other vulnerable people, is involved, it is difficult to see what kind of relationship would not give rise to a non-delegable duty of care. It is clearly not limited to the relationship between school authority and pupil.' One must frankly 'acknowledge that the law has, for various reasons, imposed a special duty on persons in certain situations to take particular precautions for the safety of others', particularly in relation to the 'immaturity and inexperience' of young people — like the appellant — entrusted to the care of an institution;[42] which is not confined to the classroom or to school hours.[43] As in the school cases, the Diocese ought be seen to owe a 'duty to ensure that reasonable care was taken for the safety' of the vulnerable young people, including the respondent, entrusted to its educational and pastoral care.[44]

38. *Third*, there is a parallel with the cases about the non-delegable obligation to provide a safe system of work, which can indeed be breached by intentional wrongdoing committed against the plaintiff to whom the duty is owed.[45] That the wrongdoing is antithetical to the defendant-employer's interests is not to the point: what is relevant is the defendant's power to control the risk, and the plaintiff's vulnerability to the

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38 See, e.g. *Gold v Essex County Council* [1942] 2 KB 293; *Ellis v Wallsend District Hospital* (1989) 17 NSWLR 553.

39 *Gold v Essex County Council* [1942] 2 KB 293 at 301 (Lord Greene MR).

40 See, e.g. *Commonwealth v Introvigne* (1982) 150 CLR 258.

41 (2003) 212 CLR 511 at 534 [36] (Gleeson CJ).

42 *Commonwealth v Introvigne* (1982) 150 CLR 258 at 271 (Mason J).

43 *Geyer v Downs* (1977) 138 CLR 91; *Richards v Victoria* [1969] VR 136.

44 *Commonwealth v Introvigne* (1982) 150 CLR 258 at 269 (Mason J).

45 See, e.g. *Chomentowski v Red Garter Restaurant Pty Ltd* (1970) 92 WN (NSW) 1070; *Nationwide News Pty Ltd v Naidu* (2007) 71 NSWLR 471; *Karatjas v Deakin University* (2012) 35 VR 355.

defendant's failure to control it. This, too, is the principled basis for distinguishing a criminal act of a stranger from the criminal act of an employee or delegate. The Diocese did not delegate its functions to strangers or passers-by: it delegated them to its servant, Fr Pickin, whom it empowered, and over whom it exercised authority and control.[46]

39. Fr Dillon's evidence established that engagement between priests and children at the time of the abuse of the appellant was not limited to teaching scripture but operated at a wider level whereby priests had a broader 'responsibility to assist [Catholic children] with their personal and spiritual growth';[47] such involvement with children being 'a most important and valued part of [a priest's] ministry' (CAB 52–4; SC[204]).[48] Fr Dillon gave evidence about the use of Presbyteries at the time for a range of activities, including social events.[49] The appellant's evidence was that '[w]hen Father Pickin asked me to go to his residence at St Patricks, I thought that it was to further my religious instruction that he had been giving me at school.' (CAB 40; SC[141]).[50] Mr Perry, too, referred to his visits to the Presbytery as relating to 'lessons'.[51]

40. What mattered was not whether that was literally a 'church event' (CAB 57, 49; SC[218], cf [190]); it was that the role the Diocese delegated to Fr Pickin gave him the authority, power, trust, control and ability to achieve the intimacy he had with the appellant (CAB 57; SC[216]). As the primary judge found, that role gave him access to children in an educational and pastoral role, an obligation to engage with them, the means to be with them alone in the Presbytery, and a culture of high regard, which permitted him to abuse the trust and respect which he was given and commanded as priest (CAB 55–57; SC[210]–[215]).

41. Adapting the words of Lord Sumption in *Woodland v Swimming Teachers Association*:[52] (1) the appellant was a child, and especially vulnerable or dependent on the protection of the Diocese against the risk of injury; (2) there was an antecedent

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46 Cf *Modbury Triangle Shopping Centre Pty Ltd v Anzil* (2000) 205 CLR 254 at 262 [14] (Gleeson CJ): 'where there is a problem as to the existence and measure of legal responsibility, it is useful to begin by identifying the nature of the harm suffered by a plaintiff, for which a defendant is said to be liable.' Here, the harm was assault by the Diocese's own delegate in the course of his delegated authority; not assault by a stranger.

47 First report of Fr Dillon, question (h) (ABFM vol 1 at 441).

48 First report of Fr Dillon, question (j) (ABFM vol 1 at 442).

49 T43.25–31 (Fr Dillon) (ABFM vol 2 at 560).

50 AA's further statement at [9] (Exh 7) (ABFM vol 1 at 315).

51 Mr Perry's statement at [9] (Exh 12B) (ABFM vol 1 at 359).

52 [2014] AC 537 at 583 [23] (Lord Sumption).

relationship between him and the Diocese, independent of Fr Pickin's wrong, (i) which placed him, as a student of religious education and parishioner, in the pastoral charge of the Diocese, and (ii) from which it was possible to impute to the Diocese the assumption of a positive duty to protect him from harm. Characteristically, the relationship involved an element of control, of an intense and substantial kind, given the moral authority with which the Diocese clothed Fr Pickin and its control over the premises of the Presbytery; (3) the appellant had no control over how the Diocese chose to perform its educational and pastoral obligations to him, whether through servants, employees or otherwise; (4) the Diocese delegated to Fr Pickin the educational and pastoral function that was the integral part of the positive duty which it had assumed towards the appellant; Fr Pickin exercised, for the purpose of the function delegated to him, the Diocese's custody or care of the appellant and the moral authority and control that went with it; and (5) Fr Pickin was at fault not in some collateral respect but in the performance of the very function assumed by the Diocese and delegated to him: namely, the educational and pastoral care of, and engagement with, a young student and parishioner.[53]

Intentional conduct

42. The Court of Appeal considered that the reasons of a bare majority in *Lepore*[54] foreclosed any court below this Court accepting that liability for breach of a non-delegable duty may be based on an intentional wrong by the delegate (CAB 177; CA [160]). This Court should, now, recognise that the confinement of doctrine in *Lepore* was in error. In short, the detailed reasons of McHugh J in dissent were correct as a matter of principle and precedent. The appellant wholly embraces them. Both Gaudron and Kirby JJ likewise did not accept any *a priori* limitation to the scope of a non-delegable duty of care. In addition, the appellant makes the following points.[55]

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53 See first report of Fr Dillon, esp. question (j) (ABFM vol 1 at 442).

54 (2003) 212 CLR 511 at 534–5 [36]–[39] (Gleeson CJ), 599 [256], 602–3 [270] (Gummow and Hayne JJ), 624 [340] (Callinan J).

55 See R Stevens, *Torts and Rights* (2007) 122–123; R Stevens, 'Non-Delegable Duties and Vicarious Liability' in J Neyers et al, (eds) in *Emerging Issues in Tort Law* (2007) at 361; N Foster, 'Convergence and Divergence: The Law of Non-Delegable Duties in Australia and the United Kingdom' in A Robertson and M Tilbury (eds), *Divergences in Private Law* (2016) at 131–133; S Todd, 'Personal Liability, Vicarious Liability, Non-Delegable Duties and Protecting Vulnerable People' (2016) 23 Torts LJ 105 at 138; J Maxwell, 'Liability of Educational Institutions for Child Abuse' (2019) 93 ALJ 477; F Santayana, 'Vicarious liability, Non-Delegable Duties and the "Intentional Wrongdoing Problem"' (2019) 25 Torts LJ 152.

43. Particularly in light of this Court's decisions in *Bird v DP* (which, for example, identified *Morris v C W Martin & Sons Ltd*[56] as a case where intentional wrongdoing indeed constituted breach of a non-delegable duty)[57] and *Willmot v Queensland* (which presupposed that, if established at trial, intentional wrongdoing *could* constitute breach of a non-delegable duty),[58] it is difficult to see *Lepore* as remaining secure authority for any definite proposition that intentional wrongdoing can *never* constitute breach of a non-delegable duty of care. As noted above, the safe system of work cases include those involving intentional wrongdoing.[59] A non-delegable duty is a duty not just to take reasonable care, but 'a duty to ensure that reasonable care is taken';[60] a duty to 'ensure that the duty is carried out';[61] or a duty to 'procur[e] careful performance of work [assigned] to others'.[62] Plainly, as in *Morris v C W Martin*, the deliberate and pretextual misuse of a delegated task is just as capable of causing harm — and manifesting a lack of reasonable care — as its negligent exercise (cf CAB 178–9; CA[165]–[167]).

44. Indeed, as McHugh J explained in *Lepore* (at [162]), a plaintiff can simply choose to frame their action as one for negligent infliction of harm, even if the defendant's act was in fact intentional.[63] Indeed, the majority view in *Lepore* produces a perverse incentive on the part of defendants to allege that the wrongdoer's conduct was intentional. More generally, it is illogical to extend a non-delegable duty of care to negligent acts yet deny its application to intentional torts. As Lord Reed JSC recently said, writing for the majority of the UK Supreme Court:[64]

> Nor am I able to agree that a non-delegable duty cannot be breached by a deliberate wrong … On [that] approach, the local authority would seemingly be liable if the foster parents negligently enabled a third party to abuse the child, but not if they abused her themselves. That can hardly be right.

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56 [1966] 1 QB 716.

57 (2024) 98 ALJR 1349 at [52] (Gageler CJ, Gordon, Edelman, Steward and Beech-Jones JJ).

58 (2024) 98 ALJR 1407 at 1423–4 [49]–[50] (Gageler CJ, Gordon, Jagot and Beech-Jones JJ), 1426 [112] (Edelman J).

59 See, e.g. *Chomentowski v Red Garter Restaurant Pty Ltd* (1970) 92 WN (NSW) 1070; *Nationwide News Pty Ltd v Naidu* (2007) 71 NSWLR 471; *Karatjas v Deakin University* (2012) 35 VR 355.

60 *Kondis v State Transport Authority* (1984) 154 CLR 672 at 686 (Mason J).

61 *New South Wales v Lepore* (2003) 212 CLR 511 at 565 [144] (McHugh J).

62 *Woodland v Swimmers Teachers Association* [2014] AC 537 at 573 [5] (Lord Sumption).

63 See also *ASIC v Cassimatis (No 8)* (2016) 336 ALR 209 at [505] (Edelman J).

64 *Armes v Nottinghamshire County Council* [2018] AC 355 at 375 [51].

The features of particular vulnerability, assumption of responsibility, lack of control on the part of the plaintiff, delegation to the wrongdoer and centrality of the wrongdoing to the discharge of that delegation are neutral as to whether the wrongdoing is negligent or intentional.

45. There is no reason the Court should refrain from correcting the wrong turning in *Lepore*.[65] The view of four members of the Court that a non-delegable duty could not extend to intentional wrongdoing did not rest upon a principle carefully worked out in a succession of cases. To the contrary, it is inconsistent with previous authority. There are differences in the reasoning of the majority. So much was noted in relation to vicarious liability in *Prince Alfred College Inc v ADC*.[66] The decision produces no useful result. In the present context, it stands in contrast to the overall thrust of the beneficial legislation mentioned above. More generally, it allows organisations to immunise themselves from liability by the simple expedient of ensuring that their staff are not employees, for whose intentional wrongdoing they *could* be vicariously liable.

46. Subsequent decisions of this Court involving intentional acts do not take *Lepore* to stand for any consistent or unquestioned legal rule. In *Prince Alfred College*, this Court observed that although the continued authority of *Lepore* was raised, the respondent did not address the matters required to invoke the authority of the Court to reconsider a previous decision.[67] Here, the appellant does so expressly. In *Bird v DP*, the matter was not raised on the pleadings nor put in issue in the lower courts.[68] Here, that has indeed occurred. In *Schokman*, members of this Court drew attention to the complexity of what was, or was not, decided in *Lepore*.[69] And in both *Bird v DP*[70] and *Willmot*,[71] this Court did not take anything decided in *Lepore* to stand in the way of recognising, in an appropriate case, that a non-delegable duty can be breached by an intentional act.

47. The law as stated by a bare majority in *Lepore* has also not been independently acted upon in a manner which militates against reconsideration. Contrary to the suggestion of

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65 See generally *John v Federal Commissioner of Taxation* (1998) 166 CLR 417.

66 (2016) 258 CLR 134.

67 (2016) 258 CLR 134 at 147 [36] (French CJ, Kiefel, Bell, Keane and Nettle JJ).

68 *Bird v DP* (2024) 98 ALJR 1349 at 1361 [42] (Gageler CJ, Gordon, Edelman, Steward and Beech-Jones JJ).

69 (2023) 278 CLR 165 at 198 [77]–[79] (Edelman and Steward JJ).

70 (2024) 98 ALJR 1349 at [52] (Gageler CJ, Gordon, Edelman, Steward and Beech-Jones JJ).

71 (2024) 98 ALJR 1407 at 1423–4 [49]–[50] (Gageler CJ, Gordon, Jagot and Beech-Jones JJ), 1426 [112] (Edelman J).

the Court of Appeal (CAB 179–80; CA[168]), the existence of new statutory duties on organisations under Divs 3 and 4 of Part 1B of the *Civil Liability Act* is not of that character. *First*, the very premise of Part IB is that the common law must now be applied in a new category of litigation — namely, that involving otherwise unincorporated organisations — where duties and liabilities had not hitherto been able to be enforced. *Second*, the common law is expressly preserved by Part 1B of the Act. A 'child abuse proceeding' within the meaning of s 6J is one 'whether arising under this Part *or the common law*.' The existence of statutory vicarious liability in Part 1B Div 3 expressly preserves, and does not aim to diminish, the common law: s 6H(3). Nor is it unheard of for the common law to be found to match statutory developments.[72] After all, the presupposition of Part 1B is that unincorporated organisations *can* be the bearer of common law liabilities.

Ground 2 – General duty of care

48. The second ground of appeal equally raises a fundamental question in the law relating to institutional liability for historic child sexual abuse: in the 1960s, did a Roman Catholic diocese — sued through a 'proper defendant' under the provisions of Part 1B of the *Civil Liability Act* — owe a duty of care in negligence to a child entrusted to its pastoral care, who is the victim of abuse committed by a diocesan priest on church property? The negative conclusion of the Court of Appeal (CAB 126, 194–5, 206; CA[13], [214], [253]) involved at least three significant errors.

49. *First*, the test of reasonable foreseeability — now in s 5B(1)(a) — has never depended on actual foresight of the precise means by which, or through whom, a harm came about. This Court was explicit in *Chapman v Hearse*[73] that 'in order to establish the prior existence of a duty of care … it is not necessary for the plaintiff to show that the precise manner in which his injuries were sustained was reasonably foreseeable'. Rather, it suffices if 'injury to a class of persons of which [the plaintiff] was one might reasonably have been foreseen as a consequence.' Put another way, the duty 'depends upon proof that the defendant and plaintiff are so placed in relation to each other that it is reasonably

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72 See, e.g. *Australian Safeway Stores Pty Ltd v Zaluzna* (1987) 162 CLR 479 (cf *Occupiers' Liability Act 1983* (Vic)); *Trident General Insurance Co Ltd v McNiece Bros Pty Ltd* (1988) 165 CLR 107 (cf *Insurance Contracts Act 1984* (Cth)).

73 (1961) 106 CLR 112 at 120–1 (Dixon CJ, Kitto, Taylor, Menzies and Windeyer JJ).

foreseeable as a possibility that careless conduct of *any kind* on the part of the former may result in damage of *some kind* to the person or property of the latter'.[74]

50. It was an error of principle for the Court of Appeal to consider that *no duty* would arise unless there were 'knowledge or belief or suspicion by the Bishop or senior priests in the Diocese that Fr Pickin posed a risk to children' (CAB 202; CA[241]). That elided duty with breach; and it identified the content of the supposed duty (and necessary foresight) with a level of particularity that is contrary to principle, and against which this Court has warned many times.[75] The pleaded duty was simply that 'the Diocese owed the plaintiff, as a child in the care of one of its priests, a duty of care to take reasonable care to avoid the plaintiff suffering foreseeable and not insignificant harm'.[76] The context was explained by reference to the educational and pastoral relationship between the appellant, Fr Picken and the Diocese.[77] But it did not depend on any constrained understanding of foreseeability artificially confined to Fr Picken alone.

51. *Second*, the Court of Appeal took an artificially limited view of the knowledge and reasonable foresight attributable to the Diocese as an unincorporated organisation sued under Part 1B of the *Civil Liability Act*. The Court of Appeal appears to have lost sight of the fact that the express purpose of Part 1B of the *Civil Liability Act* is, as explained above, to crystallise liability and impose it on a defendant representing an institution that, by reason of its being unincorporated, had not hitherto been able to be sued. The Diocese (the unincorporated organisation) was not to be equated with its Bishop alone. The question was not: what was *personally known* to the Bishop of Maitland in 1969? (cf CAB 192–194; CA[207]–[211]). Nor was it confined to 'knowledge or belief or suspicion by the Bishop or senior priests in the Diocese that Fr Pickin posed a risk to children' (CAB 202; CA[241]). But even if it *were* so confined, there was:

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74 *Minister Administering Environmental Planning and Assessment Act 1979 v San Sebastian Pty Ltd* [1983] 2 NSWLR 268 at 296 (Glass JA) (original emphasis); *Vairy v Wyong Shire Council* (2005) 223 CLR 422 at [70]–[73] (Gummow J).

75 *CAL No 14 Pty Ltd v Motor Accidents Insurance Board* (2009) 239 CLR 390 at 406 [37] (Gummow, Heydon and Crennan JJ), 418 [68] (Hayne J); *Roads and Traffic Authority (NSW) v Dederer* (2007) 234 CLR 330 at 353 [65] (Gummow J); *Vairy v Wyong Shire Council* (2005) 223 CLR 422 at 433–4 [29] (McHugh J), 441 [54], 443 [60]–[61], 446 [70]–[73] (Gummow J); 460–3 [122]–[129] (Hayne J).

76 Amended Statement of Claim at [33] (ABFM vol 1 at 15).

77 Amended Statement of Claim at [6]–[11] ('The relationship between the parties and persons relevant to this claim'), and [22]–[32] ('The Abuse of the plaintiff') (ABFM vol 1 at 22–32).

(a) the 1954 complaint to Bishop Toohey — who remained in office at the time of the appellant's abuse — about Fr McAlinden.[78] The significance of that evidence was, with respect, misunderstood by Leeming JA (CAB 194–5; CA[212]–[215]). What mattered is that the potential for abuse, and the existence of accusations of abuse, were known to the bishop of the Diocese *before* 1969, such that the possibility of clerical abuse was not unforeseeable.

(b) the unchallenged evidence of Mr McClung that, following sexual abuse which he experienced at the hands of Fr Pickin, he complained to two priests in the Diocese, Fr Timms (admittedly in confession) and Fr Doran in 1966 — that is to say, *before* the abuse of the appellant.[79] Leeming JA tended to minimise the significance of that complaint (CAB 200–1; CA[235]–[239]), to support an inference that Fr Doran could reasonably have done *nothing* in response to it.

(c) the unchallenged evidence of Fr Dillon about what was known about clerical abuse to senior church leaders, even at the time (CAB 63, 64, 66; SC[249], [253] [262]).[80]

52. To that may be added the evidence (including from Fr Dillon and lay witnesses)[81] about structural aspects of the relationship between priests and young people, involving hierarchy, intimacy, authority, deference, power and control, which made the real prospect of abuse foreseeable. What mattered was that it was foreseeable that *any* priest having private unsupervised contact with a child could *potentially* abuse a child.[82]

53. In assessing what was reasonably foreseeable to the Diocese, Pt 1B of the *Civil Liability Act* had the substantive effect of permitting knowledge to be attributed to the Diocese, precisely because it did not otherwise constitute a body corporate.[83] That relevantly included the attribution to the Diocese of the knowledge of its parish priests — including Fr Doran — to whom complaint had been made (cf CAB 198; CA[229]–[230]). The

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78 Letter dated 5 November 1987 from Dr Derek Johns to Bishop Clark (ABFM vol 1 at 296, cf 189).

79 Evidentiary statement of Stephen McClung at [15] and [16] (ABFM vol 1 at 356) and T98.45–99.5 (ABFM vol 2 at 615–16).

80 First report of Fr Dillon, question (l) (ABFM vol 1 at 443).

81 See above, paragraph 29 above and the evidence there cited.

82 Amended Statement of Claim at [35](c) (ABFM vol 1 at 16).

83 *O'Connor v Comensoli* [2022] VSC 313 at [289]–[295] (Keogh J), aff'd *Comensoli v O'Connor* [2023] VSCA 131; *Krakowski v Eurolynx Properties* (1995) 183 CLR 563 at 582–3 [38] (Brennan, Deane, Gaudron and McHugh JJ); *Christian Youth Camps Ltd v Cobaw Community Health Services Ltd* (2014) 50 VR 256 at [97]–[125] (Maxwell P).

evidence was that the parish priest was the highest local Church authority for members of the Church (SC[204]).[84] What mattered was that which was reasonably foreseeable to an institutional defendant in the Diocese's position; yet Fr Dillon's uncontradicted evidence about what was, in fact, foreseeable was discounted by the Court of Appeal on the inapt basis that it did not amount to proof of *actual* knowledge on the part of senior officers of the Diocese (CAB 126, 192–193; CA[12], [208]–[210]). That was in error.

54. *Third*, the Court of Appeal never stepped back to consider the factors relevant to the existence of the duty overall, assessed in an incremental and analogical way;[85] whether or not labelled as 'salient features'.[86] Unlike *Modbury Triangle Shopping Centre Pty Ltd v Anzil*[87] (cf CAB 125–126; CA[10]), the duty alleged here did not concern the criminal conduct of an unknown stranger in a publicly accessible place. It concerned the conduct of a priest who was a functionary of the Diocese invested with great power and influence over the laity in his parish; whose activities on premises under the control of the Diocese — the Presbytery — were subject to its supervision, direction and control;[88] to whom, by reason of the Diocese's pastoral and educational activities, a vulnerable class of young people including the appellant were exposed; and in respect of whose wrongdoing a distinct risk of harm arose (CAB 58–60; SC[224]–[233]).

55. The appellant's claim was consistent with the many other circumstances in which — whether or not vicarious liability or a non-delegable duty also exists — a defendant owes a duty of care to control a foreseeable risk of harm to a vulnerable class.[89] As the Diocese itself acknowledged in closing submissions, its position as occupier made it unsustainable to say that *no* duty of care existed.[90] But the circumstances of this case — and the scope of the Diocese's obligations — went well beyond that, and brought it towards those established relationships in which a duty of care may arise in respect of

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84 First report of Fr Dillon, question (c) (ABFM vol 1 at 439).

85 *Brookfield Multiplex Ltd v Owners Corporation Strata Plan 61288* (2014) 254 CLR 185 at [134].

86 Cf *Mallonland Pty Ltd v Advanta Seeds Pty Ltd* (2024) 98 ALJR 956 at 966 [36] (Gageler CJ, Gordon, Steward, Gleeson, Jagot and Beech-Jones JJ); *Caltex Refineries (Qld) Pty Ltd v Stavar* (2009) 75 NSWLR 649 at 676 [102] (Allsop P).

87 (2000) 205 CLR 254.

88 See, e.g. *Adeels Palace Pty Ltd v Moubarak* (2009) 239 CLR 420 at 436 [25] (French CJ, Gummow, Hayne, Heydon and Crennan JJ).

89 *Smith v Leurs* (1945) 70 CLR 256; *Commonwealth v Introvigne* (1982) 150 CLR 258; *Adeels Palace Pty Ltd v Moubarak* (2009) 239 CLR 420; *Chomentowski v Red Garter Restaurant Pty Ltd* (1970) 92 WN (NSW) 1070; *Nationwide News Pty Ltd v Naidu* (2007) 71 NSWLR 471; *Home Office v Dorset Yacht Co Ltd* [1970] AC 1004.

90 T177.44–179.6 (ABFM vol 2 at 694).

the wrongful acts of third parties, such as school authority–student,[91] employer–employee,[92] gaoler–prisoner,[93] and parent–child.[94] Most fundamentally, Fr Pickin was 'not autonomous',[95] but was at all times subject to the Diocese's control.[96] And the appellant was vulnerable, not merely by reason of his tender years, but precisely because of the relationship of power, trust and deference that the Diocese created.

PART VII – ORDERS

56. The appellant seeks the following orders:

1. The appeal be allowed with costs.

2. Orders 1 and 2 of the Court of Appeal made on 15 April 2025 be set aside, and in their place, it be ordered that the appeal be dismissed with costs.

PART VIII – TIME ESTIMATE

57. It is estimated that up to 2.5 hours will be required for oral argument (including reply).

Dated 8 July 2025

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91 *Geyer v Downs* (1977) 138 CLR 91; *Richards v Victoria* [1969] VR 136.

92 *Chordas v Bryant Pty Ltd* (1988) 20 FCR 91; *Public Transport Corporation v Sartori* [1997] 1 VR 168.

93 *Howard v Jarvis* (1958) 98 CLR 177 at 183; *New South Wales v Bujdoso* (2005) 227 CLR 1.

94 *Smith v Leurs* (1945) 70 CLR 256.

95 *Stuart v Kirkland-Veenstra* (2009) 237 CLR 215 at 249 [90] (Gummow, Hayne and Heydon JJ).

96 *Crimmins v Stevedoring Industry Finance Committee* (1999) 200 CLR 1 at 43 [105]–[107] (McHugh J; Gleeson CJ agreeing), 25 [45]–[46] (Gaudron J).

ANNEXURE TO APPELLANT'S SUBMISSIONS

No	Description	Version	Provisions	Reason for providing this version	Applicable date or dates
1.	*Civil Law (Wrongs) Act 2002* (ACT)	Current	Chapter 8A, Part 8A.2	Illustrative	Current
2.	*Civil Liability Act 2002* (NSW)	16 June 2022	Part 1, Part 1A, Part 1B, Part 1C	Version in force when proceedings commenced	Current, since 16 June 2022
3.	*Civil Liability Act 2003* (Qld)	Current	Chapter 1 Part 2A Div 3	Illustrative	Current
4.	*Civil Liability Act 1936* (SA)	Current	Part 7A, Div 4	Illustrative	Current
5.	*Civil Liability Act 2002* (Tas)	Current	Part 10C, Div 4	Illustrative	Current
6.	*Civil Liability Act 2002* (WA)	Current	Part 2A, Div 2	Illustrative	Current
7.	*Civil Liability Amendment (Organisational Child Abuse Liability) Act 2018* (NSW)	26 October 2018		Illustrative, amended *Civil Liability Act 2002* (NSW)	As enacted
8.	*Legal Identity of Defendants (Organisational Child Abuse) Act 2018* (Vic)	Current		Illustrative	Current
9.	*Personal Injuries (Liabilities and Damages) Act 2003* (NT)	Current	Part 3A Div 6	Illustrative	Current
10.	*Roman Catholic Church Trust Property Act 1936* (NSW)	1 July 2018	s 4	Version in force when proceedings commenced	15 March 2024